

JANET H GARFIELD,

No C 03-4124 VRW

Plaintiff,

ORDER

v

MICHAEL J ASTRUE, Commissioner of
Social Security,

Defendant.

"A motion for reconsideration under Rule 59(e) should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." McDowell v Calderon, 197 F3d 1253, 1255 (9th Cir 1999) (citations omitted). Plaintiff asserts that this court made "clear errors," in essence, by ruling against her and for Defendant

Michael J Astrue. Plaintiff now reasserts at considerable length the same issues and arguments in her motion to alter and amend as in the original moving papers. The court carefully considered and rejected plaintiff's arguments in the December 12, 2008 order and sees no good cause for revisiting the ruling. Accordingly, plaintiff's motion to alter or amend the December 12, 2008 order is DENIED.

A motion under FRCP 59(e) is intended for "highly unusual circumstances" and should not be used by losing parties to reargue motions as a matter of course. FRCP 59(e) is similar to Local Rule 7-9 which provides in part:

No motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the applying party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any party who violates this restriction shall be subject to appropriate sanctions.

Local Rule 7-9(c). Plaintiff's lawyer, Ian M Sammis, has demonstrated a pattern of routinely filing motions under FRCP 59(e) after losing summary judgment motions in social security cases. Sammis has also improperly filed motions under FRCP 59(e) following orders that did not result in the entry of judgment. Below is a non-exhaustive list of cases in the Northern District of California in which Sammis has used FRCP 59(e) or FRCP 60(b), which operates in a similar manner, to reargue such motions:

<u>Docket Number</u>	<u>Doc #</u>	<u>Case Title</u>	<u>Outcome</u>
3:02-cv-3670 JSW	39	Willis v Barnhart	DENIED
3:03-cv-0369 SC	25	Handley v Barnhart	DENIED
3:03-cv-2900 MEJ	26	Podgorny v Barnhart	DENIED
3:04-cv-5060 MHP	23	McCarty v Barnhart	DENIED

<u>Docket Number</u>	<u>Doc #</u>	<u>Case Title</u>	<u>Outcome</u>
3:04-cv-5279 MEJ	21	Podgorny v Barnhart	DENIED
3:04-cv-5379 VRW	19	Estate of Lopes v Barnhart	DENIED
3:05-cv-0289 SI	24	Coleman v Barnhart	DENIED
3:05-cv-2512 WHA	15	Kelsey v Barnhart	DENIED
3:05-cv-3379 MMC	20	Schanz v Barnhart	DENIED
3:06-cv-1912* SI	35	Coleman v Astrue	DENIED
3:06-cv-4367 SI	15	Riley v Barnhart	DENIED
3:06-cv-5062* JSW	33	Whitmore v Astrue	DENIED
3:06-cv-5422 SI	37	Stevenson v Astrue	DENIED
3:06-cv-5423 SI	36	Powers v Astrue	DENIED
3:06-cv-7374 CRB	24	White v Astrue	DENIED
3:07-cv-5102 VRW	24	Saenz v Astrue	DENIED
4:04-cv-4932 SBA	72	Taverniti v Astrue	DENIED
4:06-cv-7184 CW	28	Vitt v Astrue	DENIED

*motions marked with an asterisk were filed under FRCP 60(b)

Sammis appears to have established a practice of routinely misusing FRCP 59(e) — a practice which wastes court resources and, as the chart above demonstrates, has yielded no identifiable benefit to Sammis's clients. Accordingly, Sammis is now admonished that further misuse of FRCP 59(e) and/or FRCP 60(b) in this manner will result in a referral to the court's Standing Committee on Professional Conduct under Local Rule 11-6.

Going forward, Sammis may be confident that he is not misusing FRCP 59(e) or FRCP 60(b) if he employs the criteria applicable to motions for reconsideration under Local Rule 7-9(c) when considering bringing a motion under FRCP 59(e) or FRCP 60(b).

//

//

1 Plaintiff's motion to alter or amend this court's
2 December 12, 2008 order is DENIED. The clerk is directed to close
3 the file and terminate all pending motions.

4
5 IT IS SO ORDERED.

6
7
8 

9 _____
10 VAUGHN R WALKER
11 United States District Chief Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28